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Cox's EXOR. v. CROCKETT & Co.—Decided at Wytheville, August 1, 1895.—*Cardwell, J.*:

1. ASSIGNMENT—*Judgment—estoppel—res judicata.* Where the assignment of a chose in action is absolute in its terms, and judgment has been obtained thereon in the name of the assignor for the benefit of the assignee, which judgment has subsequently been declared void in a suit brought by the assignee to enforce the collection of said judgment out of the lands of the judgment debtor, the assignor of the debt is bound by the decree against his assignee, and is estopped from setting up said judgment as a *lien* on the lands of his judgment debtor, even though said assignment was merely a collateral security for a debt, or intended to carry only a partial interest. The assignor and assignee are at least privies in the transaction, and the question of the lien of said judgment is *res judicata*.

THE SOUTHERN EXPRESS COMPANY v. COMMONWEALTH OF VIRGINIA, AT THE RELATION OF JAMES A. WALKER—Decided at Wytheville, August 1, 1895.—*Riely, J.*:

1. CONSTITUTIONAL LAW—*Sec. 1220 of Code constitutional—fines—forfeitures.* Section 1220 of the Code, imposing a forfeiture of not less than \$100 on express companies and others for excessive charges, one-half of which is given to the informer, is not in conflict with Sec. 7 of Art. VIII. of the Constitution of the State. The fines mentioned in the Constitution are the fines imposed by law as a punishment for crime, and do not include forfeitures recoverable in a civil action. But even if such forfeitures are embraced within the Constitutional provision, the Legislature has power to give one-half to the informer as expense of recovery. The fine dedicated to the literary fund is the State's part of the recovery.

2. CONSTITUTIONAL LAW—*Legislative discretion—maximum fines—excessive verdicts.* The imposition and regulation of fines is within the discretion of the Legislature, and its discretion will not be questioned by the courts except where the minimum penalty is so excessive as to shock the sense of mankind. Section 1220 of the Code is not in conflict with sec. 11, Art. I. of the Constitution forbidding excessive fines; and the fact that no *maximum* fine is fixed by the section does not render the act unconstitutional. Excessive verdicts are under the control of the courts.

3. CONSTITUTIONAL LAW—*Operation of amendment VIII of Constitution of the U.S.* Art. VIII of Amendments to the Constitution of the United States has reference solely to the powers exercised by the Government of the United States, and does not apply to the powers exercised by the State governments.

MORGAN v. GLENDY AND OTHERS.—Decided at Wytheville, August 8, 1895.—*Keith, P.*:

1. TRUSTEES—*Conveyance to secure creditors—trustee a creditor—mortgage—sale by trustee.* A conveyance to trustees to secure creditors, amongst whom are the trustees themselves, is in legal effect a mortgage, and the regular course of procedure

is to file a bill in equity for its foreclosure. If, however, the trustees proceed to sell under the deed and make conveyance, their grantee takes the legal title, and the transaction, after the lapse of nearly twenty years without objection by any person interested, will be upheld if all the purchase-money has been paid and fully accounted for, or if only a small proportion of the purchase-money does not affirmatively appear to have been accounted for, and the rights of third parties have intervened, and the circumstances are such as to suggest only a mere possibility of the existence of an outstanding charge upon the land.

RICHLAND'S FLINT GLASS Co. v. HILTEBEITEL.—Decided at Wytheville, August 8, 1895.—*Riely, J.*:

1. MECHANIC'S LIEN—*Perfecting lien—termination of work.* A bill filed to enforce a mechanic's lien sufficiently alleges that the lien was perfected before the expiration of thirty days from the termination of the work, when it alleges that the lien was filed as provided for in sections 2475 and 2476 of the Code of Virginia, and the copy of the record of the lien exhibited with the bill shows that a part of the work charged for was done within thirty days of the recordation of the lien.

2. MECHANIC'S LIEN—*Quantity of Land—description.* Upon a bill filed to enforce a mechanic's lien, the quantity of land necessary for the convenient use of the building is sufficiently described by reference to an exhibit filed with the bill which gives an adequate description of the land, and seeking to enforce the lien against the land thus described.

3. CONTRACTS IN WRITING—*Parol evidence—custom—usage of trade.* Where a written contract is entered into to pay an agreed price per thousand for brick-work, but the contract is silent as to how the number of bricks is to be ascertained, parol evidence may be received to show whether there was any agreement between the parties on the subject, and if so, what it was; and if there was none, then to show what was the custom of the locality where the contract was made, or the usage of trade, and with a reference to which, in the absence of any special agreement, the parties are to be deemed to have contracted.

VIRGINIA MINING COMPANY V. WILKINSON AND OTHERS.—Decided at Wytheville, August —, 1895.—*Riely, J.*:

1. CHANCERY JURISDICTION—*Adequate remedy at law—vendor and vendee.* A vendee of real estate under an unwritten contract, who has not paid any part of the purchase money, nor been let into possession, and who has refused to complete the purchase because the vendor has declined to make such a deed as the contract called for, has a full, adequate and complete defence at law to an action against him to recover the purchase-money, and will not be entertained in a court of equity to enjoin the prosecution of such action by the vendor.

GRAY v. COMMONWEALTH.—Decided at Staunton, September 19, 1895.—*Riely, J.*:

1. CRIMINAL LAW—*Uncommunicated threats.* The nature or character of un-